

**STATE BOARD OF EQUALIZATION**

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Executive Director

April 30, 1997

Ms. M--- G. K---
S--- L---
P.O. Box XXXX
--- ---, CA XXXXX

Re: S--- L---
Account No. SR --- XX-XXXXXX

Dear Ms. K---:

This is in response to your letter dated March 19, 1997, in which you request a legal opinion addressing the application of tax to certain charges made by S--- L--- in connection with its leases of vehicles. You state that in the following circumstances, lessees are charged fees which are not included in the lease agreement.

“Sometimes clients call us and ask if they can change their due date. They may for instance want to have their due date on the 15th of each month, instead of the 1st of the month. We usually agree to do this, which will also extend the ending date of the lease by the same number of days. The first time they want to change the date, we will usually do it free of charge. After that we charge a due date change fee. The amount of the fee will vary depending on the value of their car and the extension length. . . .”

“Sometimes our lessees will want to get out of their leases, and will find someone to assume their leases. We charge a \$250 assumption fee to the new lessee to cover costs associated with pulling up a credit report, our credit approval process and that of our funding bank, correcting the title, etc. . . .”

“If a lessee did not purchase an ‘Insurance Proceeds Deficiency Liability Release’ at lease signing (#7 on the lease), a couple months into the lease we may call the lessee and offer that they can sign an ‘Optional GAP Waiver Agreement’ for a fee of \$400 to \$500. . . .”

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax, measured by the sales price, applies to the use of tangible personal property purchased from a retailer for the storage, use, or other consumption in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.)

As relevant here, a lease of tangible personal property in California is a continuing sale and purchase unless the lessor leases the property in substantially the same form as acquired and timely pays sales tax reimbursement or use tax measured by the purchase price of the property. (Rev. & Tax. Code §§ 6006(g)(5), 6006.1, 6010(e)(5), 6010.1; Reg. 1660, subds. (b)(1) and (c)(2).) When a lease is a continuing sale and purchase because either or both of the foregoing conditions have not been satisfied, the lease is subject to use tax measured by rentals payable. (Reg. 1660(c)(1).) Rentals payable include any payments required by the lease. (*Id.*) The lessee owes the tax, which the lessor is required to collect from the lessee and pay to this board. (Rev. & Tax. Code §§ 6202, 6203, 6204; Reg. 1660(c)(1).)

Our understanding is that S--- L--- did not pay California sales tax reimbursement or use tax on its purchases of the vehicles it leases. Therefore, its lease of the vehicles is a continuing sale and purchase with respect to any period in which the vehicles are located in California, for which S--- L--- is required to collect use tax from the lessee measured by the rentals payable and pay it to this board.

With regard to S--- L---'s charges to lessees to change the due date of the lease payments and the \$250 assumption fee charged to a new lessee to assume an existing lease, such charges are payments required by the lease in order to lease the vehicle. (See BTLG Annot. 330.3194 (2/5/87).) Because the payment of the due date change fee and the assumption fee are required by the lease, and are not otherwise excludable from taxation, such payments are included in the rentals payable which are subject to tax. Therefore, S--- L--- is required to collect use tax from the lessee on these charges.

However, with regard to the payment made by lessees pursuant to the "Optional GAP Waiver Agreement," our understanding is that subsequent to the lease of the vehicle, a lessee has the option to purchase a waiver of certain liabilities by entering into the Optional GAP Waiver Agreement. The charge to purchase such a waiver is separately stated from the charges for the lease of the vehicle. Under these circumstances, we conclude that the payment required under the Optional Gap Waiver Agreement is not a payment required by the lease and is not part of the taxable rental receipts. Therefore, such payment is not subject to tax. (See BTLG Annot. 330.2840 (5/13/69).)

Ms. M--- G. K---

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April 30, 1997
330.3174

If you have any further questions, please write again.

Sincerely,

Sophia H. Chung
Tax Counsel

SHC:cl

cc: San Francisco District Administrator (BH)